

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

WAYNE ROSEN, and THE SHORES AT
PALMETTO BAY, LLC., a Florida
Company.

CIRCUIT CIVIL DIVISION
CASE NO.: 2018-035839

Plaintiffs,

vs.

INDIGO STREET, LLC., a Florida Company,
JOHN DUBOIS, SHELLEY STANCZYK,
MARSHA MATSON And GARY PASTORELLA

Defendants.

/

FIRST AMENDED COMPLAINT

The Plaintiffs, WAYNE ROSEN (hereinafter “Rosen”) and THE SHORES AT PALMETTO BAY, LLC (herein after, “Shores”) by and through the undersigned legal counsel, hereby file this First Amended Complaint for damages against the Defendants, INDIGO STREET, LLC. (hereinafter “Indigo”), JOHN DUBOIS (hereinafter “DuBois”), SHELLEY STANCZYK (hereinafter “Stanczyk”), MARSHA MATSON (hereinafter, “Matson”) and GARY PASTORELLA (hereinafter, “Pastorella”) and state as follows:

INTRODUCTION

1. This is an action for damages in which the Plaintiffs allege that the Defendants have tortuously interfered with the business relations of the Plaintiffs.

JURISDICTION AND VENUE

2. Pursuant to Fla. Stat. § 47.011, venue for this action is properly laid in the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade County, as
 - a. The cause of action alleged in this Complaint accrued in Miami-Dade County, Florida.
 - b. At all times material hereto, Plaintiffs are residents of Miami-Dade County, Florida or a company incorporated in Florida.
 - c. At all times material hereto, Defendants are residents of Miami-Dade County, Florida or a company incorporated in Florida.
3. This is an action for injunctive relief and damages exceeding \$15,000.00 exclusive of interests, costs, and attorney's fees.
4. That all conditions precedent to bring this action have been performed, waived, or otherwise satisfied.

PARTIES

5. The Plaintiff, Rosen is a Miami-Dade County developer and current owner and manager of The Shores.
6. The Plaintiff, Shores, is a Florida for-profit limited liability company owned and managed by Mr. Rosen.
7. The Defendant, Indigo, is a Florida for-profit limited liability company owning property located at 9726 E. Indigo Street and 9730 E. Indigo Street, Palmetto Bay, Florida.
8. The Defendant, DuBois, is the Vice Mayor of the Village of Palmetto Bay, Florida and is also the owner and manager of Indigo Street.

9. The Defendant, Stanczyk, is the former Mayor of the Village of Palmetto Bay, Florida and former Councilwoman for the Village of Palmetto Bay. As Mayor of the Village of Palmetto Bay, Ms. Stanczyk led the charge to deny The Shores previous zoning applications. Later, Ms. Stanczyk had to accept the zoning application when the Village of Palmetto Bay was challenged with a lawsuit. Ms. Stanczyk is also a part owner of a group called “Concerned Citizens of Old Cutler”, along with Mr. Pastorella.

10. The Defendant, Matson, is a candidate for Palmetto Bay Village Council who has spoken out against Shores and is being backed in her campaign by all remaining Defendants. Defeating Shores’ project is the cornerstone of Ms. Matson’s campaign.

11. The Defendant, Pastorella, is a blogger in Palmetto Bay and along with Stanczyk, the owner of a group entitled “Concerned Citizens of Old Cutler” and has a blog tied to that group as a platform to speak poorly of the development of The Shores in regards to the company building a mixed residential-retail property. Mr. Pastorella has sent numerous emails to residents of the Village of Palmetto Bay denouncing the development.

FACTS

12. Mr. Rosen, on behalf of The Shores, proposed the company’s site plan for a multi-purpose development property in which The Shores would be used as a mixed residential-retail property.

13. The mixed-use property development would provide quality of life services such as entertainment, restaurants, and retail to serve the Village of Palmetto Bay.

14. The property’s site plans include a six-story building which includes 220 rental apartments located on the west side of the Palmetto Bay Park.

15. Under Fla. Stat. § 166.045(1)(a), in order for a municipality to acquire property for municipal use, there must be two written appraisals filed.

16. Mr. DuBois failed to attend a Special Council Meeting on August 29th, 2018 in which the site plans of The Shores were to be discussed.

17. On July 23, 2018, Indigo Street filed a Petition for Certiorari in the 11th Judicial Circuit of Florida challenging the approval of The Shores site plan.

18. It is commonly known that Mr. DuBois is the Vice Mayor of Palmetto Shores and also the owner and manager of Indigo Street.

19. Mr. DuBois filed his objections to the site plans to the Council on August 20, 2018.

COUNT I

CONSPIRACY

Plaintiffs allege and adopt Paragraphs 11-19 as set forth herein and further allege:

20. In order to find there are has been a civil conspiracy, the Court must find: (1) a conspiracy between two or more parties; (2) the conspiracy is to do an unlawful act or to do lawful acts by unlawful means; (3) the doing of some overt act in pursuance of the conspiracy; and (4) damage to plaintiff as result of acts the performed pursuant to that conspiracy. *See Walters v. Blankenship*, 931 So. 2d 137, 139 (Fla. 5th DCA 2006).

21. In this case, Ms. Stanczyk, Mr. DuBois, Ms. Matson and Mr. Pastorella were part of a civil conspiracy to stop the Village from approving The Shores previous zoning applications.

22. Ms. Stanczyk, as former Mayor of the Village of Palmetto Bay, led the charge to deny The Shores previous zoning applications only to have to later approve it when the Village was challenged with a lawsuit.

23. Ms. Matson has spoken against all applications ever filed by Shores in Palmetto Bay.

24. Mr. Pastorella and Ms. Stanczyk are part of a group entitled “Concerned Citizens of Old Cutler” that is specifically being used to bash Mr. Rosen’s project. [See Exhibit “A”]

25. That group is coordinating with Mr. DuBois and Ms. Matsen to both elect Ms. Matson and speak ill of this an all development in a series of posts and emails by this group. [See Exhibit "B"]

26. Mr. DuBois, as owner and manager of property that may be affected by the zoning plans, has done various things to stop the zoning application in moving forward.

27. Mr. DuBois failed to attend a Village of Palmetto Bay Special Council Meeting on August 29, 2018. Mr. DuBois had a duty to vote at this hearing and did not vote because he willfully and intentionally failed to attend. Mr. DuBois knew that if he were to vote against the zoning application and if the matter were to be defeated, the Village of Palmetto Bay would be subject to a lawsuit because this project would be allowed by right.

28. Also, Mr. DuBois, on behalf of Indigo Street, filed a Petition of Certiorari opposing the site plans on July 23, 2018 but did not specify or allege why the project should be denied.

29. The above stated acts performed pursuant to the conspiracy resulted in damage to the Plaintiffs and were done to affect the upcoming elections for the Village of Palmetto Bay.

Wherefore, the Plaintiff prays this Honorable Court find that the Defendants have conspired to deny Shores a property right specifically allowed within the Palmetto Bay Code and one that was approved unanimously by the Commission.

COUNT II

TORTIOUS INTERFERENCE

Plaintiffs allege and adopt Paragraphs 11-19 as set forth herein and further allege:

30. In order to find that there has been a tortious interference, Plaintiffs must allege the following: (1) there is the existence of a business relationship; (2) the defendants had knowledge of the relationship; (2) there was an intentional and unjustified interference; and (4) the breach of the relationship resulted in damages to the plaintiff. *See Chicago Title Ins. Co. v. Alday-Donalson*

Title Co. of Florida, Inc., 832 So. 2d 810 (Fla. 2nd DCA 2002).

31. Although a tortious interference with a contract and a tortious interference with a business relationship are mainly the same, the above stated necessary elements for a claim of tortious interference with a business relationship must not necessarily be evidence by an enforceable contract. *See Smith v. Ocean State Bank*, 335 So. 2d 641, 644 (Fla. 1st DCA 1976).

32. At all times material, there was the existence of a business relationship between Mr. Dubois, as Vice Mayor, and The Shores in the capacity that Mr. DuBois was the Vice Mayor of the Village of Palmetto Bay and The Shores is located in the Village of Palmetto Bay and was in negotiations with the Village of Palmetto Bay.

33. Mr. DuBois knew, that as Vice-Mayor of Palmetto Bay, he was required to support Resolutions adopted by the Village Council whether he was on the losing side of a vote or absent from the vote as he was in this case.

34. Mr. DuBois intentionally did not attend the Village of Palmetto Bay Special Council's meeting in regards to the development in question on August 29, 2018. Mr. DuBois had the opportunity to voice his concerns or objections at this meeting but was not able to because of his willful and intentional absence.

35. Although Mr. DuBois was allowed to express his opinion after the fact by filing objections to the site plans on August 20, 2018 he was interfering with his contractual and fiduciary duties by filing a Petition of Certiorari opposing the site plans on behalf of Indigo Street on July 23, 2018.
(2018-241-AP-01)

36. Because of Mr. DuBois's reckless disregard of the potential conflict of interest, the conflict caused an interference with the business relationship of the Village of Palmetto Bay, Mr. Rosen, and The Shores. The conflict of interest and intentional and unjustifiable interference with the

business's relationship caused damages to the Plaintiffs as result.

37. As a result of the conspiracy by the remaining Defendants to encourage Dubois to violate his sworn responsibility as Vice-Mayor of Palmetto Bay, Rosen and Shores have suffered damages as to the value of their property and have had to retain the services of an attorney to recover said damages.

38. Shores and Rosen also retain the right, as per F.S. § 768.72, to amend this action at the appropriate time to seek punitive damages.

WHEREFORE, Plaintiff asks for relief including actual/compensatory damages, interest, reasonable attorney fees and costs, and for such other relief proven that the Court deems just and proper.

DATED this 24th day of October 2018.

Respectfully submitted,

By: **KYMP**
600 Brickell Avenue
Suite 1715
Miami, Florida 33131
Telephone: 305-531-2424
Email: jcplanas@kymplaw.com
aserrano@kymplaw.com

By: s./ J.C. Planas
JUAN-CARLOS PLANAS, ESQ.
Fla. Bar No.: 156167

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that this Amended Complaint is being filed through the Florida E-Service Portal this 24th day of October 2018 and will be personally served upon all Defendants along with the Original Complaint.

By: **KYMP**
600 Brickell Avenue
Suite 1715
Miami, Florida 33131
Telephone: 305-531-2424
Email: jcplanas@kymplaw.com
aserrano@kymplaw.com

By: s./ J.C. Planas
JUAN-CARLOS PLANAS, ESQ.
Fla. Bar No.: 156167

EXHIBIT “A”



[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Detail By Document Number](#) /

Detail by Officer/Registered Agent Name

Florida Not For Profit Corporation

CONCERNED CITIZENS OF OLD CUTLER INC. EST. 2005

Filing Information

Document Number N18000010273

FEI/EIN Number NONE

Date Filed 09/24/2018

Effective Date 09/24/2018

State FL

Status ACTIVE

Principal Address

6940 SW 142 TERR
PALMETTO BAY, FL 33158

Mailing Address

6940 SW 142 TERR
PALMETTO BAY, FL 33158

Registered Agent Name & Address

PASTORELLA, GARY
6940 SW 142 TERR
PALMETTO BAY, FL 33158

Officer/Director Detail

Name & Address

Title P/D

PASTORELLA, GARY
6940 SW 142 TERR
PALMETTO BAY, FL 33158

Title VP/D

STANCZYK, SHELLEY
9845 E. FERN ST.
PALMETTO BAY, FL 33157

Title D

STANCZYK, STANLEY J, JR.
8800 SW 181 TERR

0000 SW 101 PLN
PALMETTO BAY, FL 33157

Annual Reports**No Annual Reports Filed****Document Images**[09/24/2018 -- Domestic Non-Profit](#)[View image in PDF format](#)

Florida Department of State, Division of Corporations

EXHIBIT “B”



J.C. Planas <jcplanas@kymplaw.com>

Fwd: Do You Support the Overdevelopment of our Downtown? Tell the Council Your Opinion at the DUV Town Hall

3 messages

[REDACTED]

[REDACTED]

[REDACTED]

From: Gary Pastorella <GaryPastorella@gmail.com>

Date: July 31, 2018 at 11:08:02 PM EDT

To: [REDACTED]

Subject: Do You Support the Overdevelopment of our Downtown? Tell the Council Your Opinion at the DUV Town Hall

The Monday, July 23 Zoning Meeting resulted in the approval of another rental apartment building in the downtown area as well as a record in the book on chaos during a Council meeting. [Link to application](#)

[Link to Video of Zoning Hearing] the hearing is long but try to fast forward to the last hour for final information (http://palmettobay.granicus.com/MediaPlayer.php?view_id=2&clip_id=1037)

There was celebration that night for someone but I doubt that it was the residents of Palmetto Bay.

Shores of Palmetto Bay's original application for the Franjo Rd 5 acres included 8 stories and over 300 apartments but was resubmitted and modified during the moratorium following the purchase of the .98 acres for a proposed community center and the acreage for roads. More to come on the community center.

Do you think the moratorium should have stopped the progress of this application until a better code is adopted?

The revision submitted was for a decrease in bonus floors of 3 to 1, and a decrease in reserve residential units from 176 to 129. Retail space is included along with the addition of some kiosks. " The applicant, the Shores at Palmetto Bay, LLC requests of the Village of Palmetto Bay ("Village"), approval of: the site plan with a height bonus, allocation of 129 reserve residential units, use of the

KYMP Mail - Fwd: Do You Support the Overdevelopment of our Downtown? Tell the Council Your Opinion at the DUV Town Hall
Village Parking Incentives Program, and design considerations to allow for the construction of a six-story, mixed-use project that will include 220 residential units, 46,230 s.f. of ground-floor retail spaces 42,615 s.f. of public open space and 22,505 s.f of private open space."

The average size of the units approved on the 23rd of July is 750 sq. ft. The smallest units are 600 sq. ft

Residents wrote and spoke to the lack of adequate parking as a consistent theme

throughout as well as the loss of view and the sunset with the now wall of buildings

approved for the area. One comment mentioned that the view to the west was

gone after 3PM. The approved plan included an additional underground parking

level to make it 7 stories total with an addition of 90-100 parking spaces. It is

unclear whether the additional underground parking requested will result in a taller

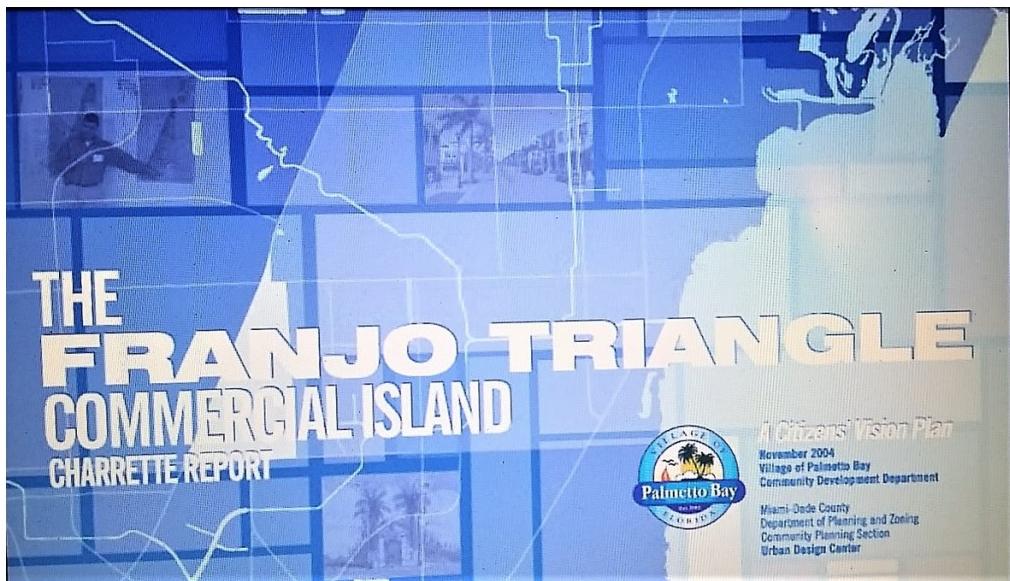
building. A recent neighboring underground parking facility was unable to go deep

enough to accommodate a full floor because of water issues.

The traffic study included in the application supports that the level of service of Franjo will remain at level of service C in the AM and level of service D. The traffic studies apparently still do not allow for the development in the surrounding area that includes 5 buildings and 6 or 7 more in the pipeline. So an application is approved based on a traffic study that will be obsolete in when the neighboring buildings are completed.

The chaos was brought on by some of the mayor's supporters involved shouting across the chamber at other residents because their differing point of view on the DUV. The police were involved with the same supporters later in the meeting and if you listen carefully at 3:45 + on the video you can hear the Councilman shouting at a resident during a break (screen is obscured by the seal) but his voice is clear.

The village government is still not listening to the residents when residents tell the Council and the Manager that they don't want to become an urban village, they want to remain a village.

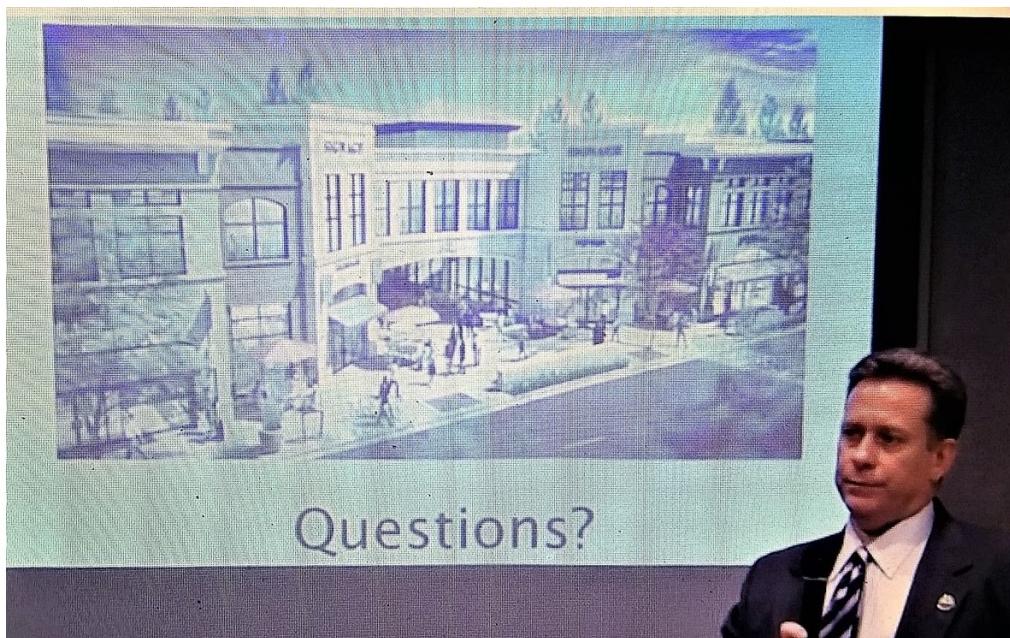


This is the report that started the downtown

Tomorrow night, August 1 at 7PM it can be expected that the history of the DUV will be re-written during the Councilman Singer History of the DUV public meeting. The quote seen on facebook made by Councilman Singer promises to explain where the DUV is headed.

The redevelopment of the downtown area started with the ([Link to report](#)) [Charrette and the FT & I report of 2004](#) report under Mayor Flinn.

Part of the reason to do the re-zoning was to stay away from the County's zoning code for the US1 corridor. As the mayor is want to say that many many meetings were held to gather input on what the residents wanted in their downtown. The report showed a downtown area between 168 to 184 St. east to 95 Ave. divided into districts. In reviewing the report under Charrette Process and Citizens' Plans you can see that the residents in 2004 wanted a village style development in the commercial area. Building heights that they requested did not reach 8 stories. The building heights were added in the districts during the passage of the zoning code prior to 2006.



This is what was originally promised to residents under the DRTF - 3 or 4 story buildings

The Downtown Redevelopment Task Force formed in 2013 and comprised of residents and professionals led by now Village Manager Ed Silva laid the groundwork to create a downtown. The goal set by the Task Force was to provide quality of life services such as entertainment, restaurants, retail, office space, etc. Silva and then Mayor Stanczyk promoted a downtown that would serve the Palmetto Bay residents in a village like setting. The YouTube presentation tape is a brief pictorial explanation. [Link to a short the presentation](#) If you note, the pictures shown during the presentation are of 3 story buildings. No ordinances or code controlling development were passed under the DRTF.



steve grid from county

It has been a repetitive statement that the re-zoning of the commercial US1 corridor was necessary to prevent the purported 17 story buildings planned by the County. The attached chart shows that the Palmetto Bay DUV Code is in line with County plans along transit corridors. We have not been saved from County Zoning at all. In some areas we exceed the County.

Plan to attend the public meeting being led by Councilman Singer. Take this opportunity to express your desires for our downtown, your likes, dislikes and tell the Council where you think the downtown should be headed. Do you want to be an Urban Village?

You have the power and right to influence the direction of your village. It is your responsibility to take action to maintain the quality of life and the type of village that you choose.

Attend the Public Meeting tomorrow night, August 1, 7PM and give your input.

Write your Council at Council@PalmettoBay-FL.gov

Your voice matters. You make a difference because of it.



[REDACTED]

FW: Follow-up Unanswered Question: Who do we endorse? Here's the answer

1 message

[REDACTED]

[REDACTED]

Thank you

[REDACTED]

From: Gary Pastorella <GaryPastorella@gmail.com>
Sent: Wednesday, September 5, 2018 11:39 PM
To: [REDACTED]
Subject: Follow-up Unanswered Question: Who do we endorse? Here's the answer

[REDACTED]

Addition to our email sent earlier tonight.

As the election season is heating up with the aforementioned antics we have been asked who do we support here in Palmetto Bay.

We are making our preliminary endorsements. In the future we will go into great depth as to our reasoning. This is just a quick amendment to answer the questions received in the last few days.

Mayor - Karyn Cunningham

District 1 - Patrick Fiore

District 3 - Marsha Matson.

Opportunities will be available to meet and get to know all the candidates. We hope you will avail yourself of the opportunities to get to know the candidates before committing to support. The time is now to ask for the candidates to support important issues, hear their views and know where their leadership will take the Village.

You have the power and right to influence the direction of your village. It is your responsibility to take action to maintain the quality of life and the type of village that you choose.

Your voice matters. You make a difference because of it.

Gary Pastorella

GaryPastorella@gmail.com

[FacebookPalmettoBayConcernedCitizens](#)

This email is only our opinion. We will not be intimidated, threatened and or coerced as we will continue to work for the residents of Palmetto Bay and their quality of life.

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[REDACTED]

Re: Agenda and Budget Hearing, Endorsement and Sample Ballot - How will you vote

3 messages



On Sep 21, 2018, at 9:47 AM, Gary Pastorella <GaryPastorella@gmail.com> wrote:

The sample ballots for the November election are now available online. The ballots include the candidates and the referendums that are county wide and village wide. [Link to one of the Sample Ballots](#). Go to the elections department link to verify your personal sample based on your address. [Link to elections](#) We will write more on the candidates and the referendums in the future.

The candidates that we support are

**Karyn Cunningham for Mayor
Patrick Fiore for Council District 1
Marsha Matson for Council District 3**



We received this email from a well known and respected village resident. We are reprinting it with his permission.

Subject: PALMETTO BAY'S FUTURE

From: WOODARDLAW woodardlaw@aol.com

Date: Thu, September 20, 2018 11:05 pm

PALMETTO BAY'S FUTURE

Dear neighbor,

My wife and I have lived in what is now Palmetto Bay for over 40 years. During that time, we have been very involved in issues related to quality of life, including ever increasing traffic, population density, building height, and environmental concerns. As many of you know, we strongly promoted the successful acquisition of The Woods, across the street from Perrine Elementary, as a passive park. We also fought the density, height and inadequate parking proposed for numerous projects planned for the area. We have attended or watched almost all of the council meetings since the formation of Palmetto Bay and spoken in support of the residents at many.

The point is this, as a result of our civic involvement, we have known Marsha Matson, candidate for Palmetto Bay Council, Dist. 3, for over 15 years.

Marsha has consistently been the people's voice on all of the issues that we believe are important. She has repeatedly done the line-by-line research that enabled us to understand complex issues and address them at the neighborhood level.

Marsha has always stood up for what we believe is in the best interests of the homeowners, as opposed to the developers. She has been a constant presence at council and zoning meetings since day one. Living 4 blocks from the gigantic, zero lot line, Atlantico apartment building at Franjo and 180 Street, she can literally see the effects of over development from her house. She lives at ground zero for the traffic and density problems.

To say that Marsha is qualified to sit on the council is an understatement. Just a few of her qualifications are:

- Masters and Ph.D. in political science.
- Retired after 22 years teaching government and public administration at the University of Miami.
- 27 year resident of what is now Palmetto Bay.
- Past president of Old Cutler South Civic Association.

- Served for 4 years on the Community Council Zoning Board, one year as chair.
(This predated Palmetto Bay)
- Member of the Palmetto Bay Heritage Committee.
- Mother of 2 children that attended local public schools.
- Works as an arbiter involving disputes between investors and financial institutions.

This is just a partial list of Marsha's accomplishments, you can learn more by going to www.marshamatson.com.

Don't be misled, Marsha doesn't just tell us what she will do if elected, she has proven what she has done for us for decades and will do for us in the future. We ask you to support Marsha Matson for Palmetto Bay Council, Dist. 3. Since campaigns are expensive, please go to her Web site and give what you can. If you will allow a campaign sign in your yard, please reply to this email and it will be delivered. Feel free to forward this to your friends and family.

Please vote for Marsha on November 6.

Jim and Niki Woodard

More news on the upcoming Sept. 24th Special Council Meeting will be forthcoming.
[Link to Special Council Meeting Agenda](#)

[Link to 2nd Budget Hearing Agenda](#)

You have the power and right to influence the direction of your village. It is your responsibility to take action to maintain the quality of life and the type of village that you choose. Your vote will determine the future of our Village. Please educate yourself on the issues.

Your voice and vote matter. You will make a difference in the future of our Village because of it.

Gary Pastorella

GaryPastorella@gmail.com

FacebookPalmettoBayConcernedCitizens

This email is only our opinion. We will not be intimidated, threatened and or coerced as we will continue to work for the residents of Palmetto Bay and their quality of life.

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[REDACTED] Mon, Oct 8, 2018 at 10:32 AM

Here's who they are publicly backing.

[REDACTED]

[REDACTED]

From: Gary Pastorella <GaryPastorella@gmail.com>
Sent: Friday, September 21, 2018 9:47 AM
To: [REDACTED]
Subject: Agenda and Budget Hearing, Endorsement and Sample Ballot - How will you vote

The sample ballots for the November election are now available online. The ballots include the candidates and the referendums that are county wide and village wide. [Link to one of the Sample Ballots](#). Go to the elections department link to verify your personal sample based on your address. [Link to elections](#) We will write more on the candidates and the referendums in the future.

The candidates that we support are

Karyn Cunningham for Mayor
Patrick Fiore for Council District 1

10/24/2018

KYMP Mail - Re: Agenda and Budget Hearing, Endorsement and Sample Ballot - How will you vote

Marsha Matson for Council District 3

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Mon, Oct 8, 2018 at 10:57 AM

[Quoted text hidden]